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February 11, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Rate Regulation, MM Docket No. 92-266

Dear Ms. Searcy:

Please find enclosed, on behalf of the National Association of Telecommunications Officers and Advisors, et. al., an original and nine copies of reply comments filed as part of the Commission's proceeding in MM Docket No. 92-266.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,

William E. Cook, Jr.

William E. Cook, Jr.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)
)

Rate Regulation)
)

MM Docket No. 92-266

TO: The Commission

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, NATIONAL LEAGUE OF
CITIES, UNITED STATES CONFERENCE OF MAYORS,
AND THE NATIONAL ASSOCIATION OF COUNTIES

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February 11, 1993

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SUMMARY

Commenters in this proceeding generally agree on the broad parameters that should govern the rate regulations established by the Commission. To ensure that cable service rates are reasonable, there is almost universal support for the adoption of a benchmark model -- as opposed to a traditional cost-of-service model. Parties in this proceeding also are virtually unanimous in urging the Commission to adopt regulations that are not administratively burdensome for the Commission, franchising authorities, cable subscribers and cable operators.

Local Governments set forth in their initial comments proposals that fit within these parameters of general agreement, and urge the Commission to adopt those proposals. In addition, the Commission must reject the blanket assertion by the cable industry that, except for a few bad actors, most cable systems are currently charging "reasonable" rates. The cable operators made this same argument before Congress and lost. Congress instead -- by a super-majority vote overriding a presidential veto -- has instructed the Commission to eliminate the monopoly rents in most current cable rates. The Commission must enact regulations that eliminate such rents.

To accomplish this Congressional goal, and to counteract the efforts by many cable operators to evade or undermine that goal, Local Governments recommended in their initial comments that the Commission roll back current rates to the rates in effect on October 5 -- the day the Consumer Protection and Competition Act of 1992 was enacted. In addition, based on the evidence of monopoly rents presented in this proceeding and before Congress, Local Governments now urge the Commission to adopt a benchmark rate model that produces a per channel rate of approximately 34 cents per channel, with a 15 percent zone of reasonableness that would deem reasonable rates falling within that range of the benchmark rate.

The Commission also must reject proposals by commenters in this proceeding that would undermine the rate protections granted consumers under Section 623 or that would be administratively burdensome to implement, administer and enforce. Among other things, the Commission must: (1) not preempt local regulations in the absence of a legislative intent to preempt such regulations; (2) not permit exceptions to the statutory definition of "effective competition"; (3) not permit cable operators to evade or violate the rate protections in Section 623 through the creation of minimal-channel

basic tiers; or (4) not postpone the effective date of its rules.

Finally, the Commission should reject efforts to interpret the certification process in a way that would subvert the Congressional objective of aiding consumers. The certification process should be simple and straightforward. Moreover, it should reflect Congress' explicit grant of rate regulatory power to franchising authorities -- independent of any right franchising authorities may have to regulate rates under state or local law or a franchise agreement.

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CITIES, UNITED STATES CONFERENCE OF MAYORS,
AND THE NATIONAL ASSOCIATION OF COUNTIES

The National Association of Telecommunications
Officers and Advisors, the National League of Cities,
the United States Conference of Mayors, and the National
Association of Counties (collectively, the "Local
Governments")¹ hereby submit these reply comments in the
above-captioned proceeding.

¹ The National Association of Telecommunications
Officers and Advisors represents local franchising
authorities in more than 4,000 local franchise
jurisdictions, which collectively regulate cable
television systems that serve an estimated 40 million
cable subscribers. The National League of Cities
represents more than 16,000 cities and towns across the
nation. The U.S. Conference of Mayors represents the
more than 950 cities with populations exceeding 30,000
residents. The National Association of Counties
represents the approximately 2,000 counties across the
nation.

I. INTRODUCTION

Commenters in this proceeding generally agree on the broad parameters that should govern the regulations established by the Federal Communications Commission ("Commission") in this proceeding. Virtually all parties in this proceeding recognize that the Commission must adopt standards to ensure that cable service rates are reasonable. There is almost universal support for the adoption of a benchmark model -- as opposed to a cost-of-service model² -- to establish the reasonable rate for such services.³

Parties in this proceeding also are virtually unanimous in urging the Commission to adopt regulations that are not administratively burdensome for the Commission, franchising authorities, cable subscribers, and cable operators. For example, franchising

² As noted in our initial comments in the proceeding, Local Governments are not opposed to those commenters who suggest that franchising authorities should have the option of using a cost-of-service methodology to regulate rates. See, e.g., Comments of Local Governments at 45 n. 20; Comments of Austin, Texas, et al. ("Austin") at 10.

³ See, e.g., Comments of the National Cable Television Association ("NCTA") at 14 ("the Commission has properly considered that some form of benchmarking would be a far superior approach"); Comments of Tele-Communications, Inc. ("TCI") at 15-16; Comments of Time Warner Entertainment Company, L.P. ("Time Warner") at 21; Comments of BellSouth at 3.

authorities and cable operators generally are in agreement that the Commission should grant franchising authorities flexibility to adopt local rate regulations and procedures to implement the Commission's regulations.⁴ Moreover, many commenters support the Commission's proposal for a simple certification process for franchising authorities⁵ and a simple complaint procedure for review of unreasonable cable programming service rates.⁶ In addition, commenters are largely in

⁴ See, e.g., TCI at 48 ("Local franchising processes and procedures should once again govern any local ratemaking"); cf. Time Warner at 30 ("the Commission should allow local franchising agreements to control the process, subject only to their compliance with the minimal procedural requirements set forth in the 1992 Cable Act"). Local processes and procedures, whether in a franchise agreement or enacted by other means, would govern rate regulation at the local level.

⁵ See, e.g., TCI at 54. In keeping with a simple certification process, however, Local Governments oppose suggestions that a franchising authority have its rate regulations in place prior to submitting a certification. See Comments of Cox Cable Communications ("Cox") at 52-53. So long as the franchising authority certifies that it will regulate rates -- once certified -- according to appropriate regulations, such assurance meets the statutory standards.

⁶ There also is support among franchising authorities, cable operators and others for the Commission exercising its authority to regulate rates where a franchising authority may not meet the certification requirements and requests the Commission to regulate rates. See, e.g., Comments of InterMedia Partners ("InterMedia") at 8 ("If a franchise authority cannot assert jurisdiction, and requests the FCC to regulate basic rates, then the FCC would be within the scope of the Act to assert jurisdiction over basic service rates"); Comments of the Consumer Federation of America ("CFA") at 123.

agreement that the Commission's rate regulations must apply on a franchise area basis, rather than on a cable system-wide basis.⁷

The Commission should establish regulations which fit within these areas of general agreement. Local Governments set forth in their initial comments proposals that: (A) fit within these general parameters; (B) meet the primary Congressional goal of ensuring that rates are reasonable for cable service; and (C) achieve the secondary Congressional goal of not imposing undue administrative burdens on cable subscribers, the Commission, franchising authorities and cable operators. Those proposals include, among others addressed in the initial comments, the following:

- adopt a method for national benchmark rates;⁸
- eliminate monopoly rents in current cable rates;⁹
- prevent evasions by roll-backs to October 1992 rates;¹⁰
- presume no "effective competition" in franchise areas;¹¹

⁷ See, e.g., NCTA at 77-78; TCI at 62; Comments of Continental Cablevision, Inc. ("Continental") at 59.

⁸ Comments of Local Governments at 40-44.

⁹ Id. at 42.

¹⁰ Id. at 82-85.

¹¹ Id. at 23-27.

- not measure the 15-percent penetration test cumulatively;¹²
- permit cities to enforce non-basic rate regulations;¹³
- allow FCC to regulate basic rates where cities request it;¹⁴
- permit local communities to jointly regulate rates;¹⁵
- adopt "post card" basic rate certification form;¹⁶
- preempt state law prohibiting rate regulation;¹⁷
- unbundle equipment rates from programming service rates;¹⁸
- limit equipment and installation rates to "actual costs";¹⁹
- regulate all cable service tiers;²⁰
- require cable system to prove that rate is "reasonable";²¹
- do not exempt small cable systems from rate regulation;²²
- reduce leased access rates for non-profit users;²³ and

¹² Id. at 10.

¹³ Id. at 72-73.

¹⁴ Id. at 19-23.

¹⁵ Id. at 31.

¹⁶ Id. at 27.

¹⁷ Id. at 28-30.

¹⁸ Id. at 46.

¹⁹ Id. at 47.

²⁰ Id. at 78.

²¹ Id. at 61.

²² Id. at 86-89.

²³ Id. at 93.

- ° limit cable bill itemization to direct costs.²⁴

Many cable operators in this proceeding have suggested that most current cable rates are "reasonable" and that only the rates of a small minority of cable systems or a few "bad actors" should be reduced.²⁵ Cable operators made these same arguments to Congress and lost. Even Time Warner concedes that Section 623 is based on the "legislative premise that cable operators have been acting as unregulated monopolies and charging monopoly prices for basic services."²⁶ Given this premise, the Commission must reject cable operators' attempts to win at the Commission what they lost before Congress, by enacting regulations that eliminate the monopoly rents Congress determined are contained in current cable rates.

To accomplish this Congressional goal, Local Governments recommended in their initial comments that the Commission roll back current rates to the rates in effect on October 5 -- the day the Consumer Protection

²⁴ Id. at 91-93.

²⁵ See, e.g., Time Warner at 43 (suggesting that the Commission review current rates and determine that only the top 2-5 percent of cable systems or subscribers are charging or paying unreasonable rates); Continental at 50 ("a benchmark based primarily on rates for a random sampling of cable systems . . . is the most efficient way to regulate cable programming services").

²⁶ Time Warner at 24.

and Competition Act of 1992 ("1992 Cable Act") was enacted. Comments of Local Governments at 84-85. In addition, based on the evidence of monopoly rents presented in this proceeding and before Congress, Local Governments now urge the Commission to adopt a benchmark rate model that produces a per channel rate of approximately 34 cents per channel -- the per channel rate necessary to strip cable operators of monopoly profits.

Local Governments urge the Commission to adopt the above proposals, and not to adopt proposals advanced by commenters that would undermine the rate protections granted consumers under Section 623 or that would be administratively burdensome to implement, administer and enforce. Below, Local Governments further refine several of the above proposals or else comment on proposals raised by others that Local Governments support. Further, Local Governments identify below proposals raised by commenters not already addressed in our initial comments that Local Governments oppose.

II. DISCUSSION

A. The Commission Should Adopt A Benchmark Model That Eliminates The Monopoly Rents In Current Cable Rates

As noted above, commenters in this proceeding almost universally suggest that the Commission adopt a

benchmark method, rather than a cost-of-service method, to ensure that cable rates are "reasonable" or not "unreasonable" -- as required by Sections 623(b) and (c) of the 1992 Cable Act -- in every cable market not subject to effective competition.²⁷ Such a benchmark must be consistent with the requirement in Section 623 that any rate model selected by the Commission be easy to enact, administer, and enforce. See Section 623(b)(2)(A); H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 62 (1992) (hereinafter "Conference Report"). Local Governments believe that such a benchmark standard should be universally applicable and not subject to manipulation by cable operators at the local level.

Section 623(b) requires that such a benchmark ensure that cable subscribers of regulated cable systems pay no more for cable service than paid by subscribers to cable systems subject to effective competition.

²⁷ Similarly, Local Governments believe that the rates for leased access channels must be "reasonable." The Commission should not establish a "maximum" reasonable rate that is so high that it discourages programmers from seeking leased access. Local Governments are especially concerned with what the "maximum" reasonable rate will be since cable operators may simply make the "maximum" rate the minimum rate that they will accept for leased access. Furthermore, as with rate regulations established pursuant to Section 623, Local Governments urge the Commission to adopt leased access regulations that are easy to administer. Such regulations should not unduly burden those that seek access to a cable system or that file a complaint against a cable operator for denying reasonable rates, terms or conditions of leased access.

Therefore, Local Governments believe that to achieve this goal, the benchmark chosen must result in the elimination of the monopoly rents most cable rates currently reflect. Local Governments believe that the record before this Commission demonstrates the extent of monopoly rents and suggest the rate at which a benchmark rate must be set to eliminate monopoly rents. As described below, Local Governments believe the record demonstrates that the Commission should establish a benchmark rate of approximately 34 cents per channel on basic and cable programming service tiers to ensure that monopoly rents are eliminated and that cable subscribers pay only "reasonable" rates for cable service.²⁸

1. Current Cable Rates Contain A Significant Monopoly Rent

There is strong evidence that current cable rates contain significant monopoly rents.²⁹ Such monopoly rents are demonstrable in a number of ways, including:
(a) cable system sales price trends; (b) differences in

²⁸ Local Governments recognize that there may be differences in costs in providing different tiers of cable programming services. However, Local Governments believe that a single per channel rate applicable to any tier is easier to administer, and would eliminate the incentives of cable operators to evade rate regulation by removing popular programming from the basic service tier.

²⁹ See, e.g., Austin at Appendix 1; CFA at 40-70; Comments of the National Association of Broadcasters ("NAB"), Appendix at 3-4.

pay and basic rate charges; (c) "franchise value" intangible assets; (d) comparison of rates with competitive cable systems; and (e) econometric studies.³⁰

Between 1984 and 1991, for example, increases in the rates for the basic tier almost doubled the increase in the rates for premium services -- \$2.00 compared to \$1.03.³¹ This increase is only explainable by the fact that premium services are subject to some competitive pressures, while basic tiers are not.³² Monopoly rents also are reflected in the sales price for cable systems; the Consumer Federation of America, for example, estimated that during the period of deregulation cable systems were selling for between 1.5 and 3.0 times higher than the construction cost for such systems.³³ Much of this difference is attributable to the monopoly power of cable systems.³⁴

³⁰ Austin at Appendix 1.

³¹ "The Cable TV Financial Databook," Paul Kagan Associates, Inc.; Austin at Appendix 1.

³² See Austin at Appendix 1.

³³ CFA at 62. Local Governments strongly agree with comments that the value represented by the difference between the construction cost and purchase price -- which is attributable to "franchise value" -- should not be included in determining the benchmark rate. See, e.g., Austin at Appendix 1.

³⁴ See, e.g., Austin at Appendix 1.

The above estimates of the cable industry's monopoly power also are supported by econometric studies and statements by the cable industry itself. In a U.S. Tax Court case,³⁵ Telecommunications Inc. ("TCI") estimated that approximately 17-45 percent of the fair market value of three of its cable systems was attributable to their monopoly power.³⁶ Moreover, the U.S. Department of Justice estimated that approximately 45-50 percent of basic rate increases since rate deregulation in 1986 is attributable to the cable industry's market power.³⁷ A study by the Consumer Federation of America reached a similar result, concluding that monopoly cable rates would fall by approximately one-half in a competitive market.³⁸

³⁵ Telecommunications, Inc. v. Commissioner, 95 T.C. 495 (1990).

³⁶ Shew, William, National Economic Research Association, Inc. "The Value of Three Cable TV Franchises," (Nov. 30, 1989).

³⁷ Robert Rubinovitz, "Market Power and Price Increases for Basic Cable Service Since Deregulation" (U.S. Department of Justice, Antitrust Division, Economic Analysis Group) (Aug. 6, 1991).

³⁸ Cable Television Regulation Hearings Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce on H.R. 1303 and H.R. 256, 102d Cong., 1st Sess. 699 (1991) (statement of Gene Kimmelman, Legislative Director of the Consumer Federation of America).

2. A Benchmark Rate Of Approximately 34 Cents Per Channel Is Necessary To Eliminate Monopoly Rents In Current Cable Rates

Although the benchmark models designed by commenters to eliminate monopoly rents differ,³⁹ Local Governments note that these models were fairly consistent in their estimate of the appropriate per channel benchmark rate for both basic and cable programming service tiers. Austin, Texas and the Consumer Federation of America suggested a benchmark rate of between 32⁴⁰ and 39.9⁴¹ cents per channel. The National Association of Broadcasters suggested a rate of \$4.52 -- or approximately 28 cents per channel -- for a 16-channel basic tier.⁴² Based on an average of these estimates, Local Governments believe that the appropriate benchmark rate -- or the center of a "zone of reasonableness" benchmark rate -- may be approximately 34 cents per channel.

As to a zone of reasonableness, the models described above suggest that the zone should be between 28 to 39.9 cents per channel -- or approximately ± 15

³⁹ See Austin at Appendix 1, CFA and NAB at Appendix.

⁴⁰ See Austin at Appendix 1.

⁴¹ See CFA at 101-03 (estimating per channel rates of 34.2, 37.8 and 39.9 cents per channel based on different formula designed to eliminate monopoly rents).

⁴² See Comments of NAB at 19.

percent from the midpoint rate of 34 cents per channel. Hence, Local Governments believe that the Commission should adopt a zone of reasonableness that does not deviate more than 15 percent from the benchmark rate.

3. The Commission Should Adopt A Benchmark Model That Best Protects Consumers From Monopoly Rents

Congress intended for the Commission to "choose the best method of ensuring reasonable rates for the basic service tier." Conference Report at 62 (emphasis added). Whatever model the Commission ultimately chooses, that model must be the one that best ensures that cable subscribers pay only a "reasonable" rate for cable service that approximates the rate such subscribers would be paying if the cable system were subject to effective competition. Given the consistency of the benchmark rate produced by the models described above, the adoption by the Commission of any other model that produced a benchmark rate that deviated significantly above the average rate produced by the above models would mean that monopoly rents have not been eliminated -- at the expense of cable subscribers.

In our initial comments, Local Governments suggested that a benchmark based on rates charged by cable systems subject to effective competition might best ensure that cable subscribers pay rates that are no higher than they would pay if their cable system were

subject to effective competition. Comments of Local Governments at 41. Local Governments continue to believe that such a benchmark model may be acceptable if it produces a per channel rate of approximately 34 cents per channel. However, several commenters in this proceeding have suggested that cable operators might be able to "game" such a benchmark model to the detriment of cable subscribers. For example, it has been suggested that a large multiple system operator ("MSO") might acquire cable systems in competitive markets and strategically raise prices in those markets to increase the benchmark rate.⁴³ Or else, cable operators might "game" the benchmark by degrading service quality.⁴⁴ If the Commission adopts a benchmark based on rates charged by competitive systems, Local Governments urge the Commission to monitor the benchmark to ensure that cable operators are not able to manipulate or "game" it.

Local Governments reject suggestions by cable operators in this proceeding that the rates of some cable systems subject to "effective competition" may be "artificially low." See, e.g., NCTA at 17-19. It is simply not the case that cable systems in competition with each other are necessarily engaging in "predatory"

⁴³ See, e.g., NAB, Appendix at 6.

⁴⁴ Id.

pricing which prevents such systems from making a return on their investment. A number of franchise areas have experienced competitive cable service for several years -- thus undercutting suggestions that such competitive systems cannot continue to operate and earn a profit by charging competitive rates. Although these cable systems may not be reaping the monopoly profits that other cable systems are reaping, this fact alone does not suggest such systems are not earning a "reasonable" profit. The Commission's estimate of what is a "reasonable" return on investment should not be made on what all cable systems currently make since most systems are collecting monopoly rents. It is appropriate for the Commission to make such determinations based solely on systems subject to effective competition since these systems are probably receiving a return that is not abusive of cable subscribers.

After reviewing the cost-based benchmark models submitted in this proceeding, Local Governments believe that a cost-based benchmark model also may eliminate the monopoly rents in current cable rates and ensure that cable subscribers pay a "reasonable" rate. Local Governments agree with those commenters that urge the Commission to collect cost data necessary to test a

cost-based benchmark model.⁴⁵ If the Commission -- in a subsequent proceeding after the collection and analysis of cost information -- determines that a cost-based model "best" ensures reasonable rates for cable service and limits the "gaming" problems inherent in a price-based approach, then Local Governments believe that the Commission should adopt such a model. See Conference Report at 62.

Regardless of what benchmark standard the Commission chooses, Local Governments believe that such standard should be applicable to all cable systems across the country and easily administrable by franchising authorities and the Commission. Hence, Local Governments oppose suggestions by cable operators in this proceeding that the Commission adopt a model that would permit cable operators to "pass through" certain costs (e.g., programming costs, retransmission consent fees, franchise fees and PEG costs) by adding them on top of the benchmark rates. A model permitting such "pass throughs" may be easily manipulated by cable operators and difficult for many franchising authorities to administer and control such "manipulation" -- thus yielding a market-by-market appeal process to the Commission. For example, cable operators would have the

⁴⁵ See, e.g., Austin at 11.

ability to manipulate rates through internal transactions with their affiliated programmers. Such manipulation would be at the expense of cable subscribers, who might no longer be assured of paying only a reasonable rate for cable service.

Local Governments are not opposed to establishing a simple matrix of rates that reflect differences in local factors that might impact rates. However, Local Governments would oppose a benchmark model that would require franchising authorities to input local data (e.g., plant miles and number of subscribers) into the model to generate a reasonable rate.

Local Governments suggest that the Commission periodically review whatever benchmark model it chooses and compare it with other benchmark alternatives -- as it begins to collect additional cost and price information -- to ensure that the model "best" protects cable subscribers from unreasonable rates, as intended by Congress. The Commission should make any modifications to the model -- or even change it -- if necessary to ensure that cable subscribers are receiving the rate protections Congress intended in enacting the 1992 Cable Act. For instance, the Commission should modify the model, or adopt a new model, if necessary to ensure that "reasonable" rates are accurately

determined. We would suggest that such overall review occur at least every three years.

4. The Commission's Benchmark Model Should Apply To Both Basic And Non-Basic Rates

The benchmark model adopted by the Commission should apply to both the basic tier and tiers of programming services.⁴⁶ Local Governments strongly disagree with suggestions that the Commission should apply a different benchmark standard to cable programming service tiers, or should limit application of a benchmark standard on those tiers only to a small number of the most "egregious" cable rates or to "bad actors."⁴⁷ Congress intended for the Commission to

⁴⁶ As noted in footnote 28, supra, we recommend that the 34 cents per channel benchmark rate apply to basic and non-basic tiers of service.

⁴⁷ See, e.g., Time Warner at 43 (suggesting that the Commission review current rates and determine that only the top 2-5 percent of cable systems or subscribers are charging or paying unreasonable rates); Continental at 50 ("a benchmark based primarily on rates for a random sampling of cable systems . . . is the most efficient way to regulate cable programming services").

Similarly, Local Governments strongly oppose suggestions that: (a) small cable systems should be allowed to charge rates higher than a "benchmark" rate; (b) a benchmark rate for small systems be based on rates currently charged by such systems; or (c) substantive rate regulations not apply to small systems. See, e.g., Comments of Coalition of Small System Operators at 10 and 15; National Telephone Cooperative Association at 4-5. Although Congress directed the Commission to reduce the administrative burdens of rate regulation on such small systems, it did not instruct the Commission to exempt such systems from a requirement that their

[Footnote continued on next page]

eliminate monopoly rents in all cable service rates, and for equipment and installation to receive such services.⁴⁸ Application of the same "reasonable" benchmark standard to both basic and cable programming service tiers will eliminate any need for cable operators to retier programming from basic to other tiers in order to recover their costs.⁴⁹

[Footnote continued from previous page]
rates be reasonable. To the extent that the Commission finds merit in the argument of small systems that their costs are higher -- thus justifying a higher rate, the Commission might reflect such costs by establishing a simple matrix of benchmark rates for cable systems with varying characteristics. However, the Commission should ensure that such rates apply to independent, stand-alone small cable systems, as defined by Local Governments in our initial comments. See Comments of Local Governments at 88.

48 The Commission must also eliminate monopoly rents in any service charges -- although Local Governments also would have independent authority to eliminate such rents in certain service charges, such as downgrade charges, pursuant to Section 632 of the 1934 Communications Act. See Comments of Local Governments at 54 n.24. Local Governments disagree with cable operators that there should be a "presumption" that any such charges are reasonable. See, e.g., TCI at 41 (suggesting that downgrade charges should be presumed reasonable if they do not exceed upgrade charges).

49 See, e.g., NCTA at 36 ("because benchmark rates for basic service may, in some instances, be inadequate, the Commission should ensure that cable systems have maximum flexibility to remove from the basic tier any services that are not required by the Act to be carried on that tier"). A benchmark rate based on the statutory factors in Sections 623(b)(2)(C) and (c)(2), and that ensures that all cable systems receive rates comparable to those received by cable systems subject to effective competition, will ensure that the benchmark rate is not "inadequate." Moreover, to the extent that the

[Footnote continued on next page]